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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO – ECF PROGRAM

ELLEN AMBROFF and TERRY
AMBROFF,

Plaintiffs,

v.

AMERICAN MEDICAL SYSTEMS, INC.,
and DOES ONE through TWENTY-FIVE,
inclusive,

Defendants.

CASE NO. C08-04289 JL

**STIPULATION AND ~~(PROPOSED)~~
ORDER TO CONTINUE EARLY
NEUTRAL EVALUATION**
Civil L.R. 7-12

This Stipulation is entered into between Plaintiffs, Ellen Ambroff and Terry Ambroff, by
and through their counsel of record, Hersh and Hersh, a professional corporation, and Defendant,
American Medical Systems, Inc., by and through its counsel of record, Kenney & Markowitz,

Kenney
&
Markowitz
L.L.P.

1 L.L.P. The parties stipulate as follows:

2 1. Prior to the Initial Case Management Conference on December 17, 2008, the
3 parties agreed to Early Neutral Evaluation as their choice of Alternative Dispute Resolution
4 pursuant to ADR L.R. 3-3 and Civil L.R. 16-2.

5 2. On December 29, 2008, the Court referred this action to ENE and assigned neutral,
6 Jacqueline Scott Corley, on January 8, 2009. The Court ordered that the ENE be completed on or
7 before March 17, 2009.

8 3. On January 14, 2009, counsel for AMS filed a Notice of Pendency of Other Action
9 providing the Court with details of a related action entitled *Ellen Ambroff, Terry Ambroff v. Robert*
10 *E. Carter, M.D., et al.*, Case No. PC 20080322, that was filed on or about May 30, 2008 in the
11 California Superior Court, El Dorado County. AMS believes that the actions filed in this Court
12 and in the Superior Court concern the same subject matter, namely, the implantation of plaintiff
13 Ellen Ambroff with the Apogee™ mesh system in June 2006, and substantially all of the same
14 parties pursuant to Rule 3-13 of the Civil Local Rules. AMS further believes that the defendants
15 in both actions are disadvantaged by this procedural tactic and that separate actions waste judicial
16 and other resources. Plaintiffs disagree on the grounds that plaintiffs believe that the state and
17 federal actions do not involve the same parties nor the same causes of action. Therefore, if AMS is
18 to join the state court action, it must file a motion in the state court action and, if granted, a motion
19 to stay in this Court, which may take several months.

20 4. On January 29, 2009, Court-appointed neutral, Jacqueline Scott Corley, initiated a
21 telephone conference with the parties to schedule an ENE. This issue of the related actions was
22 discussed along with the possibility that the ENE would be continued if the parties did not resolve
23 the disputed forum-related issue prior to the date scheduled. The current date set for ENE is March
24 4, 2009.

25 5. The parties stipulate and respectfully request that the Court vacate the current ADR
26 completion deadline of March 17, 2009 and continue the ADR completion date by an additional
27 90 days to June 15, 2009.

28
Kenney
&
Markowitz
L.L.P.

Respectfully submitted,

KENNEY & MARKOWITZ L.L.P

HERSH AND HERSH

~~PROPOSED~~ ORDER

IT IS SO ORDERED.


JAMES LARSON
UNITED STATES MAGISTRATE JUDGE